

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO**

In re: ) Case No. 17-17361  
RICHARD M. OSBORNE ) Chapter 11  
Debtor )  
                        ) Judge Arthur I. Harris  
                        )  
                        )

**LIMITED OBJECTION OF CITIZENS BANK, N.A. TO  
DEBTOR'S MOTION TO SELL PARCEL OF REAL PROPERTY LOCATED AT  
GIRDLED ROAD, CONCORD TOWNSHIP, OHIO FREE OF ANY INTEREST OF ANY  
ENTITY OTHER THAN THE ESTATE**

Citizens Bank, N.A. fka RBS Citizens, N.A. dba Charter One (“Citizens”), by and through counsel, objects to Debtor’s Motion to Sell Parcel of Real Property Located at Girdled Road, Concord Township, Ohio Free of any Interest of any Entity Other Than The Estate [Doc. 121] (the “Motion”). While Citizens does not oppose the proposed sale generally, Citizens objects to correct certain errors in the Motion and to address certain sale closing issues. In support of this Objection, Citizens states as follows:

1. In the Motion, Debtor seeks to sell the real property identified as vacant land at Girdled Road, Concord Township, Lake County, Ohio (PPN 08A0010000490) (the “Property”).
2. As evidenced by the Full Search attached as Exhibit B to the Motion (the “Title Search”), Citizens has the first and best lien on the Property based on a judgment lien filed on August 21, 2009 with the Clerk of the Lake County Common Pleas Court as judgment lien no. 09-JL-004014, and which judgment lien was renewed on August 18, 2014 as judgment lien no. 14-JL-003247 (collectively, the “Judgment Lien”).

3. Additionally, Citizens holds a mortgage on the Property pursuant to a mortgage, which was recorded with the Lake County Recorder on June 4, 2014 as Instrument No. 2014R013442 (the “Mortgage”).<sup>1</sup>

4. On April 18, 2018, Citizens filed a proof of claim (the “Claim”) in the amount of \$8,076,373.53 plus other amounts as stated in the Claim. In the Statement of Claim, which is attached as part of the Claim, the history of the secured obligations owed to Citizens is outlined in detail. The Claim is designated by the Court as Claim No. 28.

5. Citizens objects to the Motion and the proposed Order for the following reasons:

a. The lienholder should be properly identified as Citizens Bank, N.A. rather than its former name, RBS Citizens, N.A.

b. Citizens’ first and best lien on the Property should be properly referenced as the Judgment Lien.

c. The Motion and the proposed Order appear to improperly assert that if Citizens is later paid in full from some other source, the Court could review whether the proceeds received by Citizens from the sale of this Property would have to be returned to the Debtor. It is undisputed that Citizens has the first and best lien on the Property (after real estate taxes) and that there remains a balance owed well in excess of the potential Net Proceeds that may be derived from the sale of the Property.

d. While the Motion implies that Citizens will receive the Net Proceeds, no settlement statement has been attached to the Motion to indicate what amounts will be deducted from the purchase price, and how much Citizens will receive from the sale of its collateral.

---

<sup>1</sup> Citizens is not aware of the existence of the “Mortgage” identified in paragraph 6 of the Motion, nor is that mortgage referenced in the Title Search.

e. The proposed Order authorizes the Debtor to make distributions of the sale proceeds, when the distributions should be made directly by the Escrow Agent so that Citizens receives its funds without delay at Closing by wire transfer pursuant to instructions to be provided by Citizens to the Escrow Agent.

WHEREFORE, Citizens respectfully requests that its Objection be sustained and that the Debtor be required to modify the proposed Order to address Citizens' objections to the Motion and the proposed Order, and for such other and further relief as may be allowable pursuant to applicable law or in equity.

Respectfully submitted,

/s/ Michael S. Tucker  
\_\_\_\_\_  
Michael S. Tucker (0034398)  
ULMER & BERNE LLP  
1660 West 2nd Street, Suite 1100  
Cleveland, OH 44113-1448  
(216) 583-7120  
(216) 583-7121 (Fax)  
[mtucker@ulmer.com](mailto:mtucker@ulmer.com)  
Counsel for Citizens Bank, N.A. fka RBS Citizens, N.A.  
dba Charter One

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2018, a copy of the foregoing Limited Objection was filed electronically. Notice of this filing will be sent to all parties registered to receive electronic notices through the Court's CM/ECF system as listed below. Parties may access this filing through the Court's PACER system.

Gregory P. Amend on behalf of Creditor First National Bank of Pennsylvania  
[gamend@bdblaw.com](mailto:gamend@bdblaw.com), [grichards@bdblaw.com](mailto:grichards@bdblaw.com)

Alison L. Archer on behalf of Interested Party Lakeland Community College  
[alison.archer@ohioattorneygeneral.gov](mailto:alison.archer@ohioattorneygeneral.gov),  
[Trish.Lazich@ohioattorneygeneral.gov](mailto:Trish.Lazich@ohioattorneygeneral.gov); [angelique.dennis-noland@ohioattorneygeneral.gov](mailto:angelique.dennis-noland@ohioattorneygeneral.gov)

Adam S. Baker on behalf of Creditor Michael E. Osborne, Sr.  
[abakerlaw@sbcglobal.net](mailto:abakerlaw@sbcglobal.net), [adam@bakerlaw.us](mailto:adam@bakerlaw.us); [abakerlaw@gmail.com](mailto:abakerlaw@gmail.com)

Austin B. Barnes, III on behalf of Creditor Tax Ease Ohio, LLC  
[abarnes@sandhu-law.com](mailto:abarnes@sandhu-law.com), [bk1notice@sandhu-law.com](mailto:bk1notice@sandhu-law.com)

Robert D. Barr on behalf of Creditor Chicago Title Insurance Company  
[rbarr@koehler.law](mailto:rbarr@koehler.law), [rbarr@koehler.law](mailto:rbarr@koehler.law)

David T. Brady on behalf of Creditor Tax Ease Ohio, LLC  
[DBrady@Sandhu-Law.com](mailto:DBrady@Sandhu-Law.com), [bk1notice@sandhu-law.com](mailto:bk1notice@sandhu-law.com)

Gregory M. Dennin on behalf of Debtor Richard M. Osborne  
[greg@gmdlplaw.com](mailto:greg@gmdlplaw.com), [djensch1@roadrunner.com](mailto:djensch1@roadrunner.com)

Stephen R. Franks on behalf of Creditor Bank of America, N.A.  
[amps@manleydeas.com](mailto:amps@manleydeas.com)

Christopher J. Klym on behalf of Creditor Ohio Department of Taxation  
[bk@hhkwlaw.com](mailto:bk@hhkwlaw.com), [bk@hiklaw.com](mailto:bk@hiklaw.com)

Matthew H. Matheney on behalf of Creditor First National Bank of Pennsylvania  
[mmatheney@bdblaw.com](mailto:mmatheney@bdblaw.com), [bhajduk@bdblaw.com](mailto:bhajduk@bdblaw.com)

Timothy P. Palmer on behalf of Creditor The Huntington National Bank  
[timothy.palmer@bipc.com](mailto:timothy.palmer@bipc.com), [donna.curcio@bipc.com](mailto:donna.curcio@bipc.com)

Kirk W. Roessler on behalf of Creditor Estate of Jerome T. Osborne  
[kroessler@walterhav.com](mailto:kroessler@walterhav.com), [kballa@walterhav.com](mailto:kballa@walterhav.com); [slasalvia@walterhav.com](mailto:slasalvia@walterhav.com)

John J. Rutter on behalf of Creditor Mentor Lumber & Supply Co.  
[jrutter@ralaw.com](mailto:jrutter@ralaw.com)

Frederic P. Schwieg on behalf of Debtor Richard M. Osborne  
[fschwieg@schwieglaw.com](mailto:fschwieg@schwieglaw.com)

Michael J. Sikora, III on behalf of Creditor Chicago Title Insurance Company  
[msikora@sikoralaw.com](mailto:msikora@sikoralaw.com), [aarasmith@sikoralaw.com](mailto:aarasmith@sikoralaw.com); [mtroha@sikoralaw.com](mailto:mtroha@sikoralaw.com)

Nathaniel R. Sinn on behalf of Creditor First National Bank of Pennsylvania  
[nsinn@bdblaw.com](mailto:nsinn@bdblaw.com), [kslatinsky@bdblaw.com](mailto:kslatinsky@bdblaw.com)

Rachel L. Steinlage on behalf of Interested Party Zachary B Burkons  
[rsteinlage@meyersroman.com](mailto:rsteinlage@meyersroman.com), [jray@meyersroman.com](mailto:jray@meyersroman.com); [mnowak@meyersroman.com](mailto:mnowak@meyersroman.com)

Andrew M. Tomko on behalf of Creditor Tax Ease Ohio, LLC  
[atomko@sandhu-law.com](mailto:atomko@sandhu-law.com), [bk1notice@sandhu-law.com](mailto:bk1notice@sandhu-law.com)

Jeffrey C. Toole on behalf of Interested Party Zachary B Burkons  
[toole@buckleyking.com](mailto:toole@buckleyking.com), [young@buckleyking.com](mailto:young@buckleyking.com); [heberlein@buckleyking.com](mailto:heberlein@buckleyking.com)

Maria D. Giannirakis ust06 on behalf of U.S. Trustee United States Trustee  
[maria.d.giannirakis@usdoj.gov](mailto:maria.d.giannirakis@usdoj.gov)

Scott R. Belhorn ust35 on behalf of U.S. Trustee United States Trustee  
[Scott.R.Belhorn@usdoj.gov](mailto:Scott.R.Belhorn@usdoj.gov)

/s/ Michael S. Tucker  
\_\_\_\_\_  
Michael S. Tucker (0034398)  
ULMER & BERNE LLP  
Counsel for Citizens Bank, N.A. fka RBS Citizens, N.A.  
dba Charter One